

# Exhibit H

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

---

DIANNE L. KELLEY and KENNETH )  
HANSEN, )  
Plaintiffs, )  
vs. ) No. C070475 MJP  
MICROSOFT CORPORATION, a )  
Washington corporation, )  
Defendant. )

---

VIDEOTAPED 30(b) (6) DEPOSITION UPON ORAL EXAMINATION OF  
MICROSOFT CORPORATION  
MARK CROFT  
(CONTAINS CONFIDENTIAL TESTIMONY  
SUBJECT TO PROTECTIVE ORDER)

---

11:01 A.M.  
AUGUST 29, 2007  
1001 FOURTH AVENUE, SUITE 4000  
SEATTLE, WASHINGTON

REPORTED BY: JULIE R. HEAD, CRR, RPR, CCR No. 3119

Exhibit H  
Page 85 of 133

	Page 6		Page 8
11:02:38 1	Corporation for Microsoft Corporation.	11:05:03 1	Q. Working on what project?
11:02:41 2	THE VIDEOGRAPHER: The court reporter today is	11:05:04 2	A. That was -- The project was Windows 2000 and
11:02:43 3	Julie Head with the firm Yamaguchi, Obien & Mangio.	11:05:11 3	Windows XP.
11:02:46 4	Please swear in the witness and we may	11:05:17 4	Q. And before that, sir?
11:02:48 5	proceed.	11:05:19 5	A. I was a product manager.
6	MARK CROFT,	11:05:21 6	Q. Which product?
7	sworn as a witness by the Notary Public,	11:05:23 7	A. Windows 2000.
8	testified as follows:	11:05:26 8	Q. Can you give me a thumbnail sketch of your
9	EXAMINATION	11:05:28 9	educational background, please?
10	BY MR. SMART:	11:05:31 10	A. Yes. I have a first degree, a Bachelor of
11:03:02 11	Q. Mr. Croft, my name is Will Smart. You and I	11:05:35 11	Science, in engineering and then a master's degree in
11:03:04 12	have just been introduced, correct?	11:05:41 12	services engineering. Both of those degrees were --
11:03:06 13	A. Yes. Hello.	11:05:46 13	originate from the UK university system.
11:03:06 14	Q. We have never met before, right?	11:05:49 14	Q. And when did you get your master's, sir?
11:03:08 15	A. That's correct.	11:05:51 15	A. I qualified for that in 1984.
11:03:08 16	Q. Okay. Would you state your full name and	11:05:56 16	Q. And how old are you, sir?
11:03:10 17	address for the record, please, sir?	11:05:58 17	A. 46.
11:03:11 18	A. My name is Mark Andrew Croft. My residential	11:06:04 18	Q. Who did you work for -- for before you came to
11:03:16 19	address is 3048 137th Avenue Northeast, Bellevue,	11:06:06 19	work for Microsoft?
11:03:24 20	Washington State. Zip code is 98005.	11:06:09 20	A. Immediately before Microsoft, I was
11:03:28 21	Q. How long have you resided there, sir?	11:06:11 21	self-employed.
11:03:32 22	A. Just a shade under ten years.	11:06:16 22	Q. And then before that?
11:03:34 23	Q. Okay. And what is your employment, sir?	11:06:17 23	A. I was employed by -- get my sequence right,
11:03:36 24	A. My current employment is with Microsoft	11:06:23 24	here. I -- I was employed by Unisys Corporation -- I'm
11:03:39 25	Corporation and I'm employed in the marketing function.	11:06:28 25	sorry, Ernst & Young.
	Page 7		Page 9
11:03:43 1	Q. What is your title?	11:06:30 1	Q. When you were self-employed, what job did you
11:03:45 2	A. My title is director of marketing.	11:06:32 2	do?
11:03:48 3	Q. How long have you been the director of	11:06:33 3	A. I was a freelance IT consultant.
11:03:50 4	marketing for Microsoft?	11:06:41 4	Q. Have you ever given a deposition before, sir?
11:03:52 5	A. That title, now, just over two years.	11:06:44 5	A. I have not.
11:03:57 6	Q. And, so, give me an approximate start date for	11:06:47 6	Q. Have you ever been designated as a 30(b)(6)
11:04:01 7	your becoming the director of marketing.	11:06:52 7	designee before?
11:04:06 8	A. Hum. That would have been June/July of 2005.	11:06:52 8	A. Not that I'm aware.
11:04:16 9	Q. All right. And were you employed by Microsoft	11:06:54 9	Q. Have you ever given sworn testimony in any
11:04:18 10	before that?	11:06:56 10	context?
11:04:18 11	A. I was.	11:06:57 11	A. No.
11:04:19 12	Q. In what capacity, sir?	11:06:59 12	Q. All right. Showing you Exhibit No. 1 to the
11:04:21 13	A. I was a group marketing manager.	11:07:02 13	depositions here today, sir. This is a notice of
11:04:27 14	Q. For how long?	11:07:07 14	30(b)(6) deposition, and I presume you have seen that
11:04:29 15	A. That title would have been two to three years	11:07:10 15	before; is that right?
11:04:33 16	predating the director title.	11:07:11 16	A. I have.
11:04:35 17	Q. And which group were you the marketing manager	11:07:12 17	Q. Okay. And it's my understanding that you have
11:04:37 18	for?	11:07:14 18	been designate -- designated by Microsoft to testify to
11:04:38 19	A. That -- That group marketing manager role was	11:07:18 19	category number eight, which is the nature and location
11:04:41 20	in a division of Microsoft known as the Windows	11:07:21 20	of all -- all documents relating to any consumer
11:04:45 21	Division.	11:07:24 21	research undertaken by or on behalf of Microsoft with
11:04:49 22	Q. And before you were the group marketing	11:07:27 22	respect to the Windows Vista Capable sticker program;
11:04:51 23	manager for the Windows Division, what position did you	11:07:32 23	that right?
11:04:55 24	hold?	11:07:32 24	A. Yes.
11:04:56 25	A. I was a lead marketing manager.	11:07:33 25	Q. Okay. And are you going to testify on

## Exhibit H

Page 86 of 133

Yamaguchi Obien Mangio, LLC \* www.yomreporting.com  
 520 Pike Street, Suite 1320, Seattle, Washington 98101 \* (206) 622-6875 \* 1 (800) 831-6973

3 (Pages 6 to 9)

9a2e9a57-ff13-4bd9-814c-d1bcb2f45d52

		Page 26			Page 28
11:26:29 1	MR. CASPER: Objection: The question is		11:28:48 1	mine was also involved, part time: Mr. Patrick Kennedy.	
11:26:31 2	calling for speculation.		11:28:55 2	Q. Did you ask Mr. Kennedy what documents he	
11:26:35 3	A. I'm not sure.		11:28:58 3	possessed?	
4	Q. (BY MR. SMART:) Did you look for any?		11:28:59 4	A. I did not need to.	
11:26:37 5	A. I did not.		11:29:01 5	Q. And, therefore, did not do it, right?	
11:26:38 6	Q. Why not?		11:29:04 6	A. Correct.	
11:26:40 7	A. The -- Much of this relates to work done		11:29:05 7	Q. What reports were made to senior management	
11:26:44 8	several years ago that -- you know, I do not have files		11:29:08 8	about the Riley Rowe findings?	
11:26:49 9	that go back that far, specific to e-mail.		11:29:12 9	A. The -- The actual -- The final report itself	
11:26:55 10	Q. Did you look anywhere at Microsoft for any		11:29:16 10	was our -- was our -- was our main document.	
11:26:58 11	such documents kept by anybody who participated in the		11:29:21 11	Q. What reports were made to senior management --	
11:27:01 12	reviews in the meetings that you have identified?		11:29:23 12	whether they were main documents or not -- concerning	
11:27:04 13	A. No, I relied on the input from the two		11:29:25 13	the Riley Rowe findings?	
11:27:08 14	people: Mr. Cook and Mr. Srinivasan.		11:29:28 14	MR. CASPER: Object to the form of the	
11:27:11 15	Q. When you say you relied on the info, you		11:29:29 15	question as vague and ambiguous.	
11:27:13 16	wouldn't have relied on them for any info regarding		11:29:32 16	A. So, our --	
11:27:17 17	e-mails, notes, or meeting minutes because you didn't		11:29:33 17	MR. CASPER: And it's around the term -- your	
11:27:19 18	ask them about that, right?		11:29:35 18	use of the term reports, whether you're referring to the	
11:27:21 19	A. I focused on -- on documents rather than		11:29:37 19	written reports or whether you're referring to oral	
11:27:25 20	e-mail.		11:29:39 20	discussions in the meetings.	
11:27:30 21	Q. You didn't ask Mr. Srinivasan or Mr. Cook for		21	Q. (BY MR. SMART:) I want to know if there's any	
11:27:32 22	any notes or meeting minutes that they kept, correct?		22	document that makes any recommendation about the Riley	
11:27:35 23	A. Correct.		23	Rowe findings.	
11:27:36 24	Q. And you didn't ask them for any e-mails,		11:29:52 24	A. There is no other document, that I'm aware of,	
11:27:38 25	right?		11:29:54 25	beyond the Riley Rowe report itself.	
		Page 27			Page 29
11:27:38 1	A. Correct.		11:29:57 1	Q. Did you ask anybody if there are any other	
11:27:38 2	Q. And you didn't ask them for any other kind of		11:29:59 2	documents that exist beyond the Riley Rowe report?	
11:27:41 3	documents that may have been kept by any of the		11:30:02 3	A. I asked Mr. Cook and Mr. Srinivasan.	
11:27:43 4	participants that participated in those reviews,		11:30:08 4	Q. Who made the final decision to incorporate the	
11:27:45 5	correct?		11:30:11 5	Riley Rowe findings in any other Microsoft document?	
11:27:46 6	A. No.		11:30:16 6	A. I'm not aware.	
11:27:46 7	MR. CASPER: Objection -- Objection:		11:30:17 7	Q. Who made the decision to go forward with the	
11:27:47 8	Misstates the witness's testimony.		11:30:22 8	Longhorn Ready program which now is the Vista Capab	
9	Q. (BY MR. SMART:) The answer was no?		11:30:27 9	program?	
11:27:53 10	A. Yes.		11:30:28 10	A. That program was supported by a variety of	
11:27:54 11	Q. Okay.		11:30:32 11	Microsoft people.	
11:27:54 12	A. Me -- Meaning that I specifically consulted		11:30:34 12	Q. I appreciate that. I'm saying: Who made the	
11:27:57 13	with both of those colleagues on the nature of research		11:30:36 13	decision?	
11:28:01 14	documents relative to this program.		11:30:37 14	MR. CASPER: Objection: Lack of foundation;	
11:28:04 15	Q. Yes. But I'm not talking about the research		11:30:38 15	you're beyond the scope of this witness's designation.	
11:28:05 16	documents themselves, now, sir. I'm talking about		11:30:43 16	MR. SMART: No, we're not.	
11:28:07 17	e-mails, notes, meeting minutes, or other documents		17	Q. (BY MR. SMART:) You may answer, sir.	
11:28:11 18	generated by people who were in the reviews. Did you		11:30:46 18	A. I'd say over the period of the course of this	
11:28:13 19	ever ask anybody for those documents?		11:30:48 19	project, multiple people who were involved over --	
11:28:16 20	A. I did not.		11:30:54 20	guiding the project.	
11:28:16 21	Q. Do you know anybody at Microsoft who did?		11:30:54 21	Q. Who were they?	
11:28:18 22	A. I am not aware.		11:31:03 22	A. Mr. Cook and Mr. Srinivasan were critical	
11:28:23 23	Q. Who else was involved in the review meetings?		11:31:08 23	people on -- through -- through -- through much of the	
11:28:38 24	A. During the period that I was active on this		11:31:12 24	time on this project, assisted by myself.	
11:28:40 25	project, Mr. Cook, Mr. Srinivasan. Another colleague of		11:31:16 25	Q. Who were the senior managers who you had to	

Exhibit H

Page 87 of 133

Obien Mangio, LLC \* www.yomreporting.com

520 Pike Street, Suite 1320, Seattle, Washington 98101 \* (206) 622-6875 \* 1 (800) 831-6973

9a2e9a57-ff13-4bd9-814c-d1bcb2f45d52

8 (Pages 26 to 29)

		Page 38			Page 40
11:41:01 1	programs. Do I have that right?		11:43:04 1	project the -- the nature -- the findings of research.	
11:41:03 2	A. Yes.		11:43:13 2	Q. Are you -- Are you finished with your answer?	
11:41:03 3	Q. Okay. How many reports were there and from whom relating to how the term Windows Vista Capable would be understood in other languages?		11:43:16 3	A. I am.	
11:41:10 4			11:43:19 4	Q. How was it determined, then, that you would be here to answer questions relating to the nature and location of all such documents rather than Mr. Cook?	
11:41:14 5			11:43:21 5	MR. CASPER: I'm going to object to the form of the question -- or I'm going to object to the question to the extent it calls for any information that's protected by the attorney-client privilege.	
11:41:18 6	A. I'm not aware of the exact number.		11:43:26 6		
11:41:19 7	Q. And who created the reports?		11:43:31 7		
11:41:22 8	A. Mr. Cook would have that information.		11:43:32 8		
11:41:24 9	Q. So, you do not?		11:43:34 9		
11:41:25 10	A. Correct.		11:43:37 10		
11:41:25 11	Q. Okay. And do you not -- You don't have any information that you can tell me as to who actually generated the reports, right?		11	Q. (BY MR. SMART:) And I'm not asking for that I'm just asking if Mr. Cook's the guy that knows about it, why are you here testifying today, sir?	
11:41:29 12			12		
11:41:31 13			13	MR. CASPER: And I would -- I would caution you not to reveal any communications with Microsoft's lawyers in giving your answer to this question.	
11:41:32 14	A. My -- Mr. Cook informed me that that work was undertaken through our worldwide localization teams.		11:43:46 14	A. Thank you.	
11:41:35 15	Q. And who make up the worldwide localization teams?		11:43:47 15	I was the manager responsible for the project during part of the period of this -- of this program.	
11:41:40 16			11:43:50 16	Q. (BY MR. SMART:) Have you completed your answer?	
11:41:43 17	A. I'm not aware.		11:43:53 17	A. Yes.	
11:41:43 18	Q. And you didn't ask?		11:43:55 18	Q. Who determined the level of effort that you would go to in order to discover the nature and location of all documents relating to any consumer research	
11:41:45 19	A. Correct.		11:43:58 19		
11:41:46 20	Q. Did you go to any worldwide localization teams to determine what documents they might have about consumer research relating to the Windows Vista Capable program or its predecessor?		20		
11:41:47 21			21		
11:41:49 22	A. No. I established its existence through		11:44:05 22		
11:41:54 23			11:44:09 23		
11:41:57 24			11:44:13 24		
11:41:59 25			11:44:18 25		
		Page 39			Page 41
11:42:01 1	Mr. Cook.		11:44:21 1	undertaken by or on behalf of Microsoft with respect to the Windows Vista Capable sticker programs?	
11:42:07 2	Q. Mr. Cook told you that the other category of information that he had was research regarding other logo programs, correct?		11:44:23 2	A. That was a team decision.	
11:42:09 3			11:44:26 3	Q. And who participated in the team?	
11:42:13 4			11:44:28 4	MR. CASPER: I would -- I would give you the same instructions: Be careful not to reveal any communications between you and Microsoft's lawyers that would be privileged.	
11:42:14 5	A. Yes.		11:44:30 5	Q. (BY MR. SMART:) I'm not asking for the communications. I'm just asking who was on the team.	
11:42:16 6	Q. Did any -- Do any of the other logo programs have consumer research that in any way bears on the Windows Vista Capable program?		11:44:31 6	A. The core team at this time -- or dur -- during part of this -- time of this program was Mr. Srinivasan.	
11:42:18 7			11:44:34 7	Q. No, sir. You misunderstand the question.	
11:42:23 8			11:44:36 8	A. Um-hum.	
11:42:25 9	MR. CASPER: Objection to the form of the question; it's vague and ambiguous.		9	Q. I'm asking: Who determined what efforts you would go through to locate the documents that are identified in category number eight?	
11:42:26 10			10	A. Oh, I'm -- I've relied on my own judgement.	
11:42:32 11	A. Microsoft possesses research that generically applies to the nature of -- of logos and stickers.		11:44:41 11	Q. Okay. Did you have any participation in drafting -- Well, let's do it this way: Take Exhibit Number 3, sir, if you would, please. It's a document containing -- it's a notebook containing documents that were produced by Microsoft. And turn, if you would, please, to the page that is Bates stamped number KELL,	
11:42:36 12	Q. (BY MR. SMART:) Okay. And tell me how many reports or documents Microsoft has in that regard.		11:44:46 12	bunch of zeros, 087, called the OEM marketing bulletin.	
13			11:44:51 13		
14			11:44:53 14		
11:42:48 15	A. Oh, I'm not aware.		11:44:53 15		
11:42:50 16	Q. Okay. Did you ask?		11:44:57 16		
11:42:51 17	A. I established, through Mr. Cook, their existence.		11:45:00 17		
11:42:53 18	Q. Did you ask how many there were?		11:45:04 18		
11:42:55 19	A. I did not.		11:45:16 19		
11:42:56 20	Q. Did you ask what the names of the documents were?		11:45:31 20		
11:42:57 21	A. I did not.		11:45:36 21		
11:42:59 22	Q. Why not?		11:45:39 22		
11:42:59 23	A. As Mr. Cook was the expert on bringing to this		11:45:43 23		
11:43:00 24			11:46:06 24		
11:43:00 25			11:46:11 25		

**Exhibit H****Page 88 of 133**

Obien Mangio, LLC \* www.yomreporting.com

520 Pike Street, Suite 1320, Seattle, Washington 98101 \* (206) 622-6875 \* 1 (800) 831-6973

**11 (Pages 38 to 41)**

9a2e9a57-ff13-4bd9-814c-d1bcb2f45d52

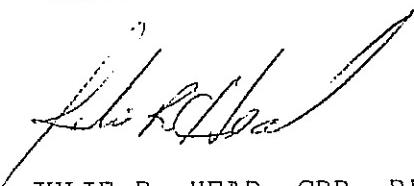
88

1 REPORTER'S CERTIFICATE  
2

3 I, JULIE R. HEAD, the undersigned Certified Court  
4 Reporter and Notary Public, do hereby certify:

5 That the sworn testimony and/or proceedings, a  
6 transcript of which is attached, was given before me at  
7 the time and place stated therein; that any and/or all  
8 witness(es) were by me duly sworn to testify to the  
9 truth; that the sworn testimony and/or proceedings were  
10 by me stenographically recorded and transcribed under  
11 my supervision, to the best of my ability; that the  
12 foregoing transcript contains a full, true, and  
13 accurate record of all the sworn testimony and/or  
14 proceedings given and occurring at the time and place  
15 stated in the transcript; that I am in no way related  
16 to any party to the matter, nor to any counsel, nor do  
17 I have any financial interest in the event of the case.

18 WITNESS MY HAND AND SEAL THIS 31st day of August,  
19  
20 2007.  
21



22 JULIE R. HEAD, CRR, RPR  
23 Certified Court Reporter  
CCR No. 3119  
24 Notary Public in and for the  
State of Washington, residing in  
Snohomish County. Commission  
Expires 8-09-11.  
25

